Supreme Court, U.S.
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No. 86-430

In The
Supreme Court of the United States
October Term, 1986

TRANS WORLD AIRLINES and
INSURANCE COMPANY OF NORTH AMERICA,
Petitioners,

v.

E. ANN DISSELL,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE

BRIEF OF RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the exercise of subject matter jurisdiction by the Maine Workers' Compensation Commission, based on Respondent's residence in Maine, violated the Due Process Clause of the fourteenth amendment or the Full Faith and Credit Clause of article IV, section 1 of the United States Constitution.

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Authorities	iii
Statement of Facts	1
Reasons Why the Petition Should Be Denied	3
1. The Decision Below Does Not Raise an Important Question of Federal Law Deserving Adjudication by this Court.	3
a. The Due Process and Full Faith and Credit Issues have been Decided by this Court.	3
b. The Decision Below is Limited to its Facts and is Likely to Have an Impact Only Upon the Litigants.	6
2. The Decision Below Does Not Conflict With Any Other State or Federal Court Decision.	7
Conclusion	10
Appendix	App. 1

TABLE OF AUTHORITIES

Page

CASES

Alaska Packers Association v. Industrial Accident Commission, 294 U.S. 532 (1935) 5

Allstate Insurance Co. v. Hague, 449 U.S. 302 (1981) ... 4, 5

Cardillo v. Liberty Mutual Insurance Company, 330 U.S. 469 (1947) 5

Carroll v. Lanza, 349 U.S. 408 (1955) 5

Crider v. Zurich Insurance Co., 380 U.S. 39 (1965) 5

DiMuro v. Industrial Commission of Arizona, 142 Ariz. 57, 688 P.2d 703 (Ariz.Ct.App. 1984) 8, 9

Dissell v. Trans World Airlines, et al., 511 A.2d 441 (Me. 1986) 1

Follese v. Eastern Airlines, 271 N.W.2d 824 (Minn. 1978) 9

George H. Wentz, Inc. v. Sabasta, 337 N.W.2d 495 (Iowa 1983) 8

Harlow v. Emery-Waterhouse Co., 484 A.2d 1002 (Me. 1984) 4, 8

Hutchins v. Murphy Motor Freight Lines, Inc., 331 N.W.2d 761 (Minn. 1983) 9

International Shoe Co. v. Washington, 326 U.S. 310 (1945) 6

Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943) 5

Martin v. Furman Lumber Company, 134 Vt. 1, 346 A.2d 640 (1975) 9

Neumer v. Yellow Freight System, Inc., 220 Kan. 607, 556 P.2d 202 (1976) 8

Shannon v. Communications Satellite Corp., 302 A.2d 583 (Me. 1973), *cert. dismissed*, 414 U.S. 989 (1973) 4, 7, 8

TABLE OF AUTHORITIES—Continued

Page

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) 6

STATUTE

Me. Rev. Stat. Ann. tit. 39 § 2(5)(A)(2) (1978) 7

TREATISES

A. Larson, *Larson's Workmen's Compensation*, § 86.10 (Desk ed. 1968) 8

4 A. Larson, *The Law of Workmen's Compensation*, § 86.70 (1986) 8

Restatement (Second) of Conflicts of Law, § 181 (1971) 8

The Respondent, E. Ann Dissell, respectfully requests that this Court deny the Petition for Writ of Certiorari of Petitioners Trans World Airlines ("TWA") and the Insurance Company of North America ("INA") seeking review of the decision of the Supreme Judicial Court of Maine in *Dissell v. Trans World Airlines, et al.*, 511 A.2d 441 (Me. 1986).[1]

STATEMENT OF FACTS

Respondent E. Ann Dissell, at the time a resident of Maryland, was hired as a flight attendant by TWA in 1975. Ms. Dissell moved to Maine two years later where she has lived ever since. While living in Maine, TWA assigned her for pay purposes first to Boston for one year, then to New York for one year, and finally back to Boston, where she remained assigned until she was injured in 1981. Throughout this period. Ms. Dissell commuted from her residence in Maine to either Boston or New York where her flights originated.

On May 12, 1981, Ms. Dissell was injured during a flight from Boston to Chicago, Illinois. She received medical treatment immediately upon her return to Maine. Ms. Dissell has been totally disabled from work since her injury. She has received workers' compensation payments under a signed agreement in which TWA and INA agreed to pay benefits under the Massachusetts Workers' Compensation Act.

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[1] The Opinion below is included in Petitioners' Appendix at B-1 through B-9.

In 1983, Ms. Dissell petitioned for an award under the Maine Workers' Compensation Act. After hearings were held, a single commissioner found that there were sufficient contacts with the State of Maine to find that the Maine Workers' Compensation Commission ("the Commission") had both personal and subject matter jurisdiction over Ms. Dissell's claims.[2] In particular, the Commission found that TWA had solicited business in Maine through advertisements and telephone listings in Maine.[3] On the basis of Ms. Dissell's total incapacity, the Commission awarded her ongoing compensation with a credit for the payments she was receiving under the Massachusetts Workers' Compensation Act. When TWA and INA filed a motion for findings of fact, the Commission filed a subsequent decision, concluding that it had subject matter jurisdiction over Ms. Dissell's claims based upon TWA's activities in Maine and Ms. Dissell's residence in Maine.

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[2] Despite receiving actual notice of the proceedings, neither TWA nor INA appeared before the Commission to contest Ms. Dissell's claims. *See* Appendix at App. 1 and App. 2. Their first appearance was to request findings of fact after the Commission's decision was issued. As a result, facts regarding TWA's contacts in the State of Maine were not fully developed.

Petitioners make the following factual statements regarding their contacts in Maine that have never been established and are without foundation in the Record:

> TWA does not fly within the State of Maine. It owns no property, and conducts no business in the State. None of Ms. Dissell's employment activities ever occurred within the State.

Petition for Writ of Certiorari at 6.

[3] Petitioners' Appendix at C-2.

TWA and INA appealed to the Appellate Division of the Commission on subject matter jurisdiction grounds only. The Appellate Division affirmed the Commission's decision, but found that Ms. Dissell's residence in Maine at the time of her injury, taken alone, was sufficient to support the Commission's assertion of subject matter jurisdiction.

TWA and INA then filed a Petition for Appellate Review with the Maine Supreme Judicial Court, challenging only the Appellate Division's findings regarding subject matter jurisdiction. Appellate review was granted. In their brief, TWA and INA challenged both personal and subject matter jurisdiction. The Maine Supreme Judicial Court held: (1) that TWA and INA had waived any challenge to personal jurisdiction; and (2) that Ms. Dissell's residence in Maine at the time of her injury conferred subject matter jurisdiction upon the Commission.

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REASONS WHY THE PETITION SHOULD BE DENIED

1. The Decision Below Does Not Raise an Important Question of Federal Law Deserving Adjudication by this Court.

a. The Due Process and Full Faith and Credit Issues have been Decided by this Court.

Petitioners encourage this Court to grant a Writ of Certiorari on the grounds that this Court has never set forth the minimum contacts necessary under the Due Process Clause of the United States Constitution to support subject matter jurisdiction. Petition for Writ of Certiorari

at 8. Apparently, Petitioners have overlooked this Court's decision in *Allstate Insurance Co. v. Hague*, 449 U.S. 302 (1981), which sets forth the standards governing due process limitations in a choice-of-laws context.

In *Allstate*, this Court held that a state may apply its own law to an event occurring outside of the state so long as the state has "a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair." *Allstate Insurance Co. v. Hague*, 449 U.S. at 313. The *Allstate* standard is pertinent here because the Maine Workers' Compensation Commission's subject matter jurisdiction is coextensive with that permitted by due process of law under the United States Constitution. *Shannon v. Communications Satellite Corp.*, 302 A.2d 583 (Me. 1973), *cert. dismissed*, 414 U.S. 989 (1973). After this Court's decision in *Allstate*, the Maine court in *Harlow v. Emery-Waterhouse Co.*, 484 A.2d 1002 (Me. 1984), confirmed *Shannon*, citing *Allstate* for the proposition that due process was directed at fairness towards the litigants. *Id.*, 484 A.2d at 1005 (citing *Allstate*, 449 U.S. at 308 n. 10).

In the present case, the Maine Supreme Judicial Court correctly applied *Allstate* and found that Maine had "a significant contact, or significant aggregation of contacts, creating state interests, such that the choice of its law is neither arbitrary nor fundamentally unfair." Petitioners' Appendix at B-6. Respondent Dissell was a Maine resident for four years before her injury, she was a Maine resident at the time of her injury and she has remained a Maine resident to this date. *Id.* Thus it was reasonable for Respondent Dissell to expect that she would be protected by

Maine law. In addition, the active solicitation of business in Maine and the international scope of Petitioner TWA's business activities make it reasonable for Petitioner TWA to anticipate that it will be subject to the laws of the State of Maine. Finally, applying Maine law is not arbitrary because Maine has a legitimate interest in seeing that the burden of Respondent Dissell's work-related injury falls upon her employer rather than her community. *Id.* Therefore, the Maine court concluded that it was not unfair for Petitioner TWA to compensate the Respondent according to the law of the state in which she resides. Petitioners' Appendix at B-7. In so ruling, the Maine court relied upon a long line of decisions of this Court, recognizing the state's paramount interest in ensuring that its residents are adequately compensated. *Crider v. Zurich Insurance Co.*, 380 U.S. 39 (1965); *Carroll v. Lanza,* 349 U.S. 408 (1955); *Cardillo v. Liberty Mutual Insurance Company,* 330 U.S. 469 (1947); *Magnolia Petroleum Co. v. Hunt,* 320 U.S. 430 (1943); *Alaska Packers Association v. Industrial Accident Commission,* 294 U.S. 532 (1935).

The Maine court also applied Maine law consistently with the requirements of the Full Faith and Credit Clause as set forth in *Allstate Insurance Co. v. Hague,* 449 U.S. 302. The injury occurred on a plane in air space between Boston and Chicago; the contract was executed in Kansas City, Missouri; the employment relationship was carried out in the numerous states and foreign countries in which TWA operates; and Maine has been and continues to be the state of Respondent Dissell's residence. No other state has such an overriding interest in Respondent Dissell's claims that applying Maine law infringes upon that state's sovereignty. Petitioners' Appendix at B-7, B-8.

b. The Decision Below is Limited to its Facts and is Likely to Have an Impact Only Upon the Litigants.

The Maine court's decision is limited to its facts based both upon the procedural history below and the facts at issue below. First, the procedural history of this case distinguishes it from others likely to come before this Court since claims such as those raised by Petitioners normally are raised on personal jurisdiction grounds. An objection to personal jurisdiction presents the most expeditious way in which a litigant may extricate himself from litigation in which he believes he has been unfairly joined. In this instance, after the Commission held that it had personal jurisdiction, Petitioners waived any claim to the contrary by failing to object in a timely fashion. Nevertheless, Petitioners argue here, in essence, that they lack sufficient minimum contacts to anticipate reasonably that they would be haled into court in Maine under the principles of *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) and *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). To the extent that those arguments may once have been available, they were waived when Petitioners neglected to raise them in a timely manner.

Second, the circumstances surrounding Respondent's injuries were unusual in that the points of contact of the states involved were widely dispersed. Petitioners' Appendix at B-7. Only in the context of national or international, high speed air or space travel could a situation arise that would be similar to that at issue here. In other contexts the employer and/or the employment relationship are closely connected to a more limited geographical area, thus limiting the choices of law available.

Nor is the court's ruling likely to result in forum shopping as Petitioners speculate. The decision below is limited to application of Maine's workers' compensation laws to an employee who was a resident of the state at the time of her injury. The notion that employees will change their states of residence in the anticipation that they will get injured on the job is plainly specious.

Finally, Petitioners' claim that they have been unfairly surprised by the Commission's exercise of jurisdiction is unfounded. Maine law permits all employers to designate in the employment contract that a particular jurisdiction's workers' compensation laws will apply. Rev. Stat. Ann. tit. 39 § 2(5)(A)(2) (1978); *see also Shannon v. Communications Satellite Corp.*, 302 A.2d at 584 n. 2, 585. Petitioners, who failed to make any such designation in their employment contract with Respondent Dissell, cannot now be heard to complain.

2. The Decision Below Does Not Conflict With Any Other State or Federal Court Decision.

Petitioners suggest that the decision of the Maine Supreme Judicial Court conflicts with decisions of the highest courts of other states.[4] *See* Petition for Writ of

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[4] Apparently, Petitioners do not allege that the decision below conflicts with any federal court decision. Neither has Respondent found any federal court decision which addresses the issue of subject matter jurisdiction in a workers' compensation context.

Moreover, Petitioners' statement that Professor Larson's treatise on workers' compensation law or the Restatement (Second) of Conflicts somehow implies such a conflict is

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Certiorari at 8, 10. Each of the decisions which Petitioners cite, however, rests on a workers' compensation statute which expressly delineates the grounds for exercise of subject matter jurisdiction.[5] Since Maine permits the exercise of subject matter jurisdiction "coextensive with that allowed by the United States Constitution" (*Harlow v. Emery-Waterhouse Co.*, 484 A.2d at 1004; *Shannon v. Communications Satellite Corp.*, 302 A.2d at 584), the

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inaccurate. On the contrary, Professor Larson states that he believes an employee's residence would be considered sufficient, by itself, to support subject matter jurisdiction. 4 A. Larson, *The Law of Workmen's Compensation*, § 86.70 at 16-122 (1986); A. Larson, *Larson's Workmen's Compensation*, § 86.10 at 16-16 (Desk ed. 1986). Similarly, the Restatement's itemization of factors is plainly worded disjunctively and concludes that the state of the employee's residence would be sufficient, by itself, to support subject matter jurisdiction. Restatement (Second) of Conflicts of Law § 181 (1971); *See also Shannon v. Communications Satellite Corp.*, 302 A.2d at 585 n. 3.

5 Petitioners concede that the constitutional issue has never been reached in these cases. *See* Petition for Writ of Certiorari at 9.

In *DiMuro v. Industrial Commission of Arizona*, 142 Ariz. 57, 688 P.2d 703 (Ariz.Ct.App. 1986), the Arizona statute required that the worker must have been hired or "regularly employed" within the state. In *Neumer v. Yellow Freight System, Inc.*, 220 Kan. 607, 556 P.2d 202 (1976), the Kansas statute required that the contract of employment must have been "made" in Kansas for subject matter jurisdiction to exist. Finally, in *George H. Wentz, Inc. v. Sabasta*, 337 N.W. 2d 495 (Iowa 1983), the Iowa statute specified that one of four possible situations must exist for subject matter jurisdiction to be present: (1) employment principally located in Iowa; (2) employee working under contract of hire made in Iowa; (3) employee working under contract of hire made in Iowa when workers' compensation law of another state is not applicable; or (4) employee working under a contract of hire made in Iowa for employment outside the United States.

basis for the exercise of subject matter jurisdiction is distinct from the narrow statutory basis of other jurisdictions.

In fact, state court decisions which touch upon constitutional due process in the exercise of subject matter jurisdiction of workers' compensation claims are consistent with the Maine court decision in this case. These cases have recognized that the state's strong public policy interest in the welfare and support of its residents serves as the basis for the application of subject matter jurisdiction. *Follese v. Eastern Airlines,* 271 N.W.2d 824 (Minn. 1978) (Minnesota had a "more than casual" interest in employee's claims sufficient to satisfy the minimal requirements of the Full Faith and Credit and Due Process Clauses when it applied Minnesota law where claimant flight attendant was a resident of Minnesota, was hired in Florida, and was injured while stationed in Florida)[6]; *DiMuro v. Industrial Commission of Arizona,* 142 Ariz. 57, 688 P.2d 703 (Ariz.Ct.App. 1984) (court was constrained by its statute requiring the worker to be hired or regularly employed within the state of Arizona, but nevertheless remarked that "residency may be a constitutionally permissible criterion for extraterritorial application of forum law"); *Martin v. Furman Lumber Company,* 134 Vt. 1, 346 A.2d 640 (1975) (Vermont court held it was obvious that Vermont had a strong public policy interest in the future welfare and support of survivors of the decedent who, if not adequately provided for, could impose a burden upon Vermont taxpayers and social agencies).

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[6] Later distinguished on other facts. *Hutchins v. Murphy Motor Freight Lines, Inc.,* 331 N.W.2d 761 (Minn. 1983).

The decision of the Maine Supreme Judicial Court below holding that Maine had a legitimate and substantial interest sufficient to overcome any due process limitation, is therefore entirely consistent with the law of other jurisdictions.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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November 22, 1983

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Re: *E. Ann Dissell—File No. 160C603666-8*

Dear Mr. O'Brien:

Enclosed please find copy of Ms. Dissell's Petition for Award of Compensation which was filed with the Maine Workers' Compensation Commission on September 7, 1983.

Sincerely,
Margaret S. Akar

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November 22, 1983

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Re: *E. Ann Dissell*

Gentlemen:

Enclosed please find copy of Ms. Dissell's Petition for Award of Compensation which was filed with the Maine

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Sincerely,

Margaret S. Akar

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